IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

CRP.No. 2748 of 2000(G)

(IA. 2458 /2000 IN OS.148/1998 of III ADDL.SUB COURT, KOZHIKODE)

REVN. PETITIONERS/PETITIONERS.

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1. R.T. PRAMEELA JOSEPH, W/O. LATE L. JOSEPH,
   MAYANAD PARAMBA, PUTHIYARA.

2. K. NIRMALA DINEES, AGED 49, W/O. DINEES PEETTAR SHEELS,
   KARAD ROAD, KOZHIKODE.

3. K. RAMABAI SOBHANA, W/O. P.K. JOHN, SAIMAN,
   5/682 A, PULIKKOTTIL, NEAR CDA COLONY, ERANHIPALAM.

   BY ADV. SRI.K.S.MADHUSOODANAN
   ADV. SRI.C.P.PEETHAMBARAN
   ADV. SRI.T.N.SURESH
   ADV. SRI.T.K.ANIRUDHAN
   ADV. SRI.B.R.VIJAYAMOHAN
   ADV. SMT.PRAJANI RAJAN

RESPONDENTS/RESPONDENTS:

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1. BIYATRIS THADHOR, W/O. LATE THADHOR KUNNAMKODI,
   CIVIL STATION, KOZHIKODE.

2. JOISE ENAST, D/O. THADHOR KUNNAMKODI,
   JANITHA, CIVIL STATION.

3. K. VIJAYAN SAMUVAL, S/O. THADHOR KUNNAMKODI,
   29, GOLD BORE ROAD, NORTHYORD WESTERN, ONTARIO,
   PIN-M91.IA6-CANADA (NOW RESIDING AT 5/682, KACHERI AMSOM
   DESOM, CIVIL STATION, KOZHIKODE.)

4. PRAKASH VILLIAM,
   THADHOR KUNNAMKODI, 5/682, KACHERI AMSOM DESOM.

   R1 AND R4 BY ADV. SRI.JACOB ABRAHAM

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11/12/2007, ALONG WITH CRP NO. 2749 OF 2000 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.NO. 2748 OF 2000

ORDER ON C.M.P.NO. 5543 OF 2000 IN C.R.P.NO. 2748 OF 2000

DISMISSED.

11.12.2007 SD/- K.T. SANKARAN, JUGGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

C.R.P. Nos. 2748 & 2749 OF 2000

Dated this the 11th December, 2007

O R D E R

Both these revisions are filed by the plaintiffs in O.S.No. 148 of 1998 on the file of the court of the Subordinate Judge-III, Kozhikode . The suit was filed by them for partition and for cancellation of a settlement deed. For the relief of partition, the suit was valued at Rs.4,20,000/-. 3/7 shares claimed by the plaintiffs were valued at Rs.1,80,000/- and court fee of Rs.300/- was shown as payable under section 37(2) of the Kerala Court Fees and Suits Valuation Act . In so far as the relief for cancellation of the settlement deed, the suit was valued at Rs.1,20,000/-.

2. The court below passed an order dated 23.10.1999 holding that the plaintiffs have to value the relief for cancellation of the settlement deed at Rs.4,20,000/- and they have to pay the court fee accordingly under section 40 of the Kerala Court Fees and Suits Valuation Act.

3. The plaintiffs filed I.A.No.5742 of 1999 to amend the plaint and to reduce the valuation in respect of the relief of cancellation of settlement deed from Rs.1,20,000/- to 1,14,593.33/- . In the application for amendment, the plaintiffs stated that the value of the plaint A and B schedule properties would be Rs.3,43,780/- and value of their 6/18 shares would be Rs.1,14,593.33/-. The quantum of shares claimed by the plaintiffs were also sought to be amended.

4. The court below passed a 'judgment' dated 22nd March, 2000 rejecting the plaint under Order VII Rule 11(b) of the Code of Civil Procedure . The court held that the plaintiffs failed to comply with the specific order to correct the valuation.

5. The plaintiffs filed I.A.No. 2458 of 2000 for restoration of the suit. This

application was filed under section 151 of the Code of Civil Procedure. They also filed I.A.No.2459 of 2000 under Section 148 of the Code of Civil Procedure for extension of time for amending the valuation and for payment of balance court fee . The court below by order dated 2nd September, 2000, dismissed both these applications on the ground that the order to amend the valuation was not complied with and no application to review that order was made. By the order in I.A.No. 2458 of 2000, the court below directed that court fee of Rs.22,500/- paid along with the application shall be returned to the plaintiffs. Consequent on the dismissal of I.A.No.2458 of 2000, the application filed under section 148 of the Code of Civil Procedure for extension of time was also dismissed.

6. Learned counsel for the respondents raised a preliminary objection that the Civil Revision Petitions are not maintainable since the order rejecting the plaint under Order VII Rule 11(b) is appealable . The respondents contended that the rejection of a plaint shall be deemed to be a decree under Section 2(2) of the Code of Civil Procedure and the remedy of the revision petitioners is to either file an appeal or to file an application for review. In ***Gopalan Nair vs. Bhaskaran*** **(2002 (1) K.L.T. 251)**, a Division Bench of this court took the view that once a plaint is rejected under Order VII Rule 11(c) of the Code of Civil Procedure for non payment of court fee, the remedy available to the plaintiff is only by way of an appeal or by way of a review and no application either under Order IX Rule 9 or under section 151 of the Code of Civil Procedure would lie to restore the suit. In ***Mable vs. Dolores*** **(2001 (2) K.L.T. 612)**, it was held that the plaintiff is not entitled to invoke the jurisdiction of the court under section 151 of the Code of Civil Procedure when the plaint is rejected in terms of Order VII Rule 11.

7. In view of the decisions of the Division Bench , I am of the view that the Civil Revision Petitions are not maintainable. The remedy of the petitioners is to file an appeal against or to file an application for review of the order rejecting the plaint. Therefore, interference under section 115 of the Code of Civil Procedure is not called for in these revisions.

8. However, it is made clear that if the petitioners file an appeal or an application for review, the period during which these revisions were pending shall be excluded under Section 14 of the Limitation Act. These revisions were filed on 15.11.2000. Therefore, the period from 15.11.2000 to 11.12.2007 shall be excluded.

9. It is relevant to note that at the time when the Civil Revision Petitions were filed, the decision in ***Varghese Vs. Devi Academy*** **(1999 (1) K.L.T. 440)** wherein**,** it was held by the Single Bench of this court that under the inherent powers of the court, a suit dismissed for non payment of balance court fee could be restored was available. The decision in ***Varghese vs. Devi Academy*** **(1999 (1) K.L.T. 440)** was overruled in ***Mable vs. Dolores*** **(2001 (2) K.L.T. 612).** Thus it is clear that the petitioners were prosecuting the Civil Revision Petitions under the bonafide belief that they would be able to get the required reliefs by filing the Civil Revision Petitions.

With the above observations, the Civil Revision Petitions are dismissed. No order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. Nos. 2748 & 2749 OF 2000

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Dated this the 11th December, 2007

O R D E R